

51 Am. Jur. 2d Licenses and Permits § 11

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Licenses and Permits

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II. Power to Require License

B. Police Power

§ 11. Requirement that license promotes public health, morals, safety, or welfare

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Licenses](#)  3 to 5.1, 7(1)

As a justification for a licensing requirement as a proper exercise of the police power, the courts generally require a showing that the requirement at least tends to promote the public health, morals, safety, or welfare.¹ Licensing laws have been deemed to be within this purpose where:

- the activity or occupations would subject the public to an unreasonable risk of harm if allowed to exist unfettered²
- the law seeks to impose uniformity³
- the licensing law extends the public trust only to those with proven qualifications⁴
- the licensing law protects the public from incompetence and dishonesty in those who provide the licensed services⁵
- the activity or profession sought to be regulated is often associated with criminal activity⁶
- the law protects the health and safety of the general public from unqualified practitioners and unsanitary conditions⁷
- the law requires licensing in an attempt to limit noise, traffic, and disruption⁸
- the law assures adequate facilities to perform the licensed services⁹
- the law legitimately protects a particularly vulnerable group¹⁰

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Footnotes

¹ City of Birmingham v. Goldstein, 151 Ala. 473, 44 So. 113 (1907); Doe v. Jones, 327 Ill. 387, 158 N.E. 703, 55 A.L.R. 303 (1927); Howard v. Lebbly, 197 Ky. 324, 246 S.W. 828, 30 A.L.R. 830 (1923); State ex rel. Wyatt v. Ashbrook, 154 Mo. 375, 55 S.W. 627 (1900); People v. Ringe, 197 N.Y. 143, 90 N.E. 451 (1910); Auto Reality Service, Inc. v. Brown, 27 Ohio App. 2d 77, 56 Ohio Op. 2d 253, 272 N.E.2d 642 (10th Dist. Franklin County 1971); Ideal Tea Co. v. City of Salem, 77 Or. 182, 150 P. 852 (1915); Krystal Jeep Eagle, Inc. v. Bureau of Professional and Occupational Affairs, 725 A.2d 846 (Pa. Commw. Ct. 1999); State ex rel. Kemplinger v. Whyte, 177 Wis. 541, 188 N.W. 607, 23 A.L.R. 67 (1922); State v. City of Sheridan, 25 Wyo. 347, 170 P. 1, 1 A.L.R. 955 (1918).

² Ex parte Tharp, 912 S.W.2d 887 (Tex. App. Fort Worth 1995), petition for discretionary review granted, (Feb. 28, 1996) and aff'd, 935 S.W.2d 157 (Tex. Crim. App. 1996).

- ³ Fredericksburg Auto Auction, Inc. v. Department of Motor Vehicles, 242 Va. 42, 406 S.E.2d 23 (1991).
- ⁴ Brimer v. Arkansas Contractors Licensing Bd., 312 Ark. 401, 849 S.W.2d 948 (1993); Leduc v. Com., 421 Mass. 433, 657 N.E.2d 755 (1995); Kirkpatrick v. Introspect Healthcare Corp., 114 N.M. 706, 845 P.2d 800, 21 U.C.C. Rep. Serv. 2d 493 (1992).
- ⁵ Rosas v. Dishong, 67 Cal. App. 4th 815, 79 Cal. Rptr. 2d 339 (4th Dist. 1998); Mascarenas v. Jaramillo, 111 N.M. 410, 806 P.2d 59 (1991).
- ⁶ FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990) (holding modified on other grounds by, City of Littleton, Colo. v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774, 124 S. Ct. 2219, 159 L. Ed. 2d 84 (2004)) (hotels which rent for less than 10 hours as fostering prostitution).
- ⁷ Brown v. Who's Three, Inc., 217 Ga. App. 131, 457 S.E.2d 186 (1995); Tgb, Inc. v. City of St. Louis Bd. of Bldg. Appeals, 154 S.W.3d 353 (Mo. Ct. App. E.D. 2004).
- ⁸ Fantasy Book Shop, Inc. v. City of Boston, 652 F.2d 1115 (1st Cir. 1981).
- ⁹ Durand v. Western Sur. Co., 245 Neb. 649, 514 N.W.2d 840 (1994).
- ¹⁰ Powers v. Harris, 379 F.3d 1208 (10th Cir. 2004) (applying Oklahoma law; referring to casket buyers).

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